

ARKANSAS SUPREME COURT

No. 07-785

ANARIAN CHAD JACKSON
Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
Appellee

Opinion Delivered

December 4, 2008

PRO SE APPEAL FROM THE CIRCUIT
COURT OF LEE COUNTY, CV 2007-
61, HON. HARVEY L. YATES, JUDGE

AFFIRMED.

PER CURIAM

In 2003, appellant Anarian Chad Jackson was convicted of second-degree murder by a jury subsequent to being charged with first-degree murder.¹ He was sentenced as a habitual criminal to eighty years' imprisonment, and the sentence was to run consecutively to a life sentence and a ten-year sentence in other criminal cases. The Arkansas Court of Appeals affirmed. *Jackson v. State*, CACR 03-1127 (Ark. App. Dec. 1, 2004).

In 2007, appellant filed a petition for writ of habeas corpus in the circuit court of the county in which he was incarcerated. The circuit court denied the petition, and appellant has lodged an appeal here from the order.

In a petition for writ of habeas corpus, the petitioner must demonstrate that the trial court lacked jurisdiction or that the commitment was invalid on its face. Otherwise, there is no basis for

¹The State requested a *nolle prosequi* as to a count of engaging in a continuing criminal enterprise in the first degree.

finding that a writ of habeas corpus should be issued. *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam). To support a claim of facial invalidity or lack of jurisdiction, the petitioner must make a “showing, by affidavit or other evidence, [of] probable cause to believe” that he is illegally detained. Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2006); *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991).

On appeal, appellant’s points for reversal include two arguments that were not raised in the petition filed in the circuit court.² Appellant is precluded from advancing arguments that were not initially raised below. *Callaway v. State*, 368 Ark. 412, 246 S.W.3d 889 (2007). The remaining arguments are that the circuit court’s order denying the habeas petition was deficient and that the trial court lacked subject-matter jurisdiction over his case.

In appellant’s first argument, he contends that the circuit court committed reversible error by failing to set forth findings of facts and conclusions of law in the order denying the petition for writ of habeas corpus. He relies on the language contained in Arkansas Rule of Criminal Procedure 37.3(a), and cites two cases that concerned a petition filed pursuant to Arkansas Rule of Criminal Procedure 37.1.³

Appellant does not present a legal basis for this contention, as he does not cite any statutes, cases or procedural rules that pertain specifically to the required language to be contained in orders denying habeas corpus petitions. Moreover, Rule 37.3 that is relied upon by appellant has no applicability in habeas proceedings. An argument that presents no citation to authority or convincing

²Appellant argues that he was charged with first-degree murder in violation of Arkansas Code Annotated § 5-10-102(a)(2) (Repl. 1997). He also contends that the trial court erred with regard to an alleged misrepresentation in the testimony of the State’s primary prosecution witness. Appellant previously raised the latter issue in the direct appeal.

³Appellant cited *Sanders v. State*, 352 Ark. 16, 98 S.W.3d 35 (2003), and *Wooten v. State*, 338 Ark. 691, 1 S.W.3d 8 (1999).

argument to support it will not be considered. *Weatherford v. State*, 352 Ark. 324, 101 S.W.3d 227 (2003). Appellant fails to establish entitlement to relief on this point.

Next, in two separate points on appeal, appellant contends that the trial court lacked subject-matter jurisdiction over his case. Both arguments focus on appellant's conviction for second-degree murder when he was initially charged in the felony information with first-degree murder.

In the first jurisdictional argument, appellant contends that the trial court "stripped itself of subject-matter jurisdiction" when it instructed the jury as to second-degree murder. This instruction was given premised upon second-degree murder being a lesser-included offense of first-degree murder. In support of this argument, appellant cites *State v. Murphy*, 315 Ark. 68, 864 S.W.2d 824 (1993).⁴

Our ruling in *Murphy* has no applicability to the present matter. Therein, the trial court acted of its own accord in dismissing habitual-offender charges contained in a felony information. We held that the court's *sua sponte* actions had usurped the prosecutor's constitutional duties and violated separation of powers. Here, the prosecution requested that the second-degree-murder instruction be given, and the defense agreed that the prosecution was entitled to make that request. The trial court's action was not undertaken *sua sponte*, and *Murphy* is factually distinguishable in that respect from the present matter.

What's more, we did not address any issue pertaining to subject-matter jurisdiction in

⁴Additionally, appellant relies upon *Byrd v. State*, 337 Ark. 413, 992 S.W.2d 759 (1999), for the rule that second-degree murder is not a lesser-included offense of first-degree murder. The holding of *Byrd* was limited to a particular type of murder that is not at issue here. See Ark. Code Ann. § 5-10-103(a)(1) (Repl. 1997) (requiring proof of "circumstances manifesting extreme indifference to the value of human life" in the murder of a person fourteen years or younger.) Nevertheless, we have held that second-degree murder can be a lesser-included offense of first-degree murder in certain situations. See e.g. *McCoy v. State*, 347 Ark. 913, 69 S.W.3d 430 (2002).

Murphy or hold that the trial court was deprived of its subject-matter jurisdiction because of its action. In short, the trial court's action here in giving the second-degree murder jury instruction at the request of the prosecutor did not cause its jurisdiction over appellant's case to be divested. Appellant has failed to show that the trial court lacked subject-matter jurisdiction over his criminal charges, including the lesser-included offense of second-degree murder.

Next, appellant contends that the trial court lacked subject-matter jurisdiction to enter a judgment of conviction for second-degree murder. He claims that "no rational basis" supported the court's action because appellant's defense at trial was total denial. He avers that a defendant is limited to being found either "guilty" or "not guilty" of a charge when his or her defense is complete innocence and can not be found guilty of a lesser-included offense in that case, citing *Hall v. State*, 326 Ark. 318, 933 S.W.2d 363 (1996).

Appellant does not rely upon valid authority for this contention. Our decision in *Hall, supra*, does not hold that a lesser-included-offense instruction could not be submitted to a jury when a criminal defendant presents a defense of total innocence.⁵ Further, *Hall* does not support the claim that a trial court lacks subject-matter jurisdiction over such a lesser-included offense. To the contrary, it is reversible error to refuse to give such an instruction when a lesser-included offense is supported by even the slightest evidence.⁶ *Britt v. State*, 344 Ark. 13, 38 S.W.3d 363 (2001). As

⁵In Hall's Rule 37.1 petition based upon ineffective assistance of counsel, he argued that trial counsel was ineffective for failing to submit a lesser-included-offense jury instruction. We found that Hall's innocence defense was inconsistent with submission of a lesser-included-offense instruction and that counsel was not ineffective based upon the trial strategy of not requesting the inconsistent instruction.

⁶To the extent that appellant's underlying argument is that the second-degree-murder jury instruction was not supported by the requisite amount of evidence, reaching that determination does not present an issue that is cognizable in a petition for writ of habeas corpus. The writ will not be issued to correct errors or irregularities that occurred at trial. *Meny v. Norris*, 340 Ark. 418, 13 S.W.3d 143 (2000) (per curiam). The remedy in such a case is direct appeal. *Id.*

appellant provides no legal basis for this argument, it will not be considered further. *Weatherford, supra*. Appellant is thus unsuccessful in demonstrating that the trial court lacked subject-matter jurisdiction to enter a judgment of conviction for second-degree murder in the criminal case.

We find no error and affirm the circuit court.

Affirmed.